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BOOK REVIEWS

LECTURES ON LEGAL HISTORY AND MISCELLANEOUS LEGAL ESSAYS. James Barr Ames; With a Memoir; Cambridge, 1913; Harvard University Press; pp. viii, 553.

"He may leave his impress for good upon that system of law which, as Lord Russell has well said, 'is, take it for all in all, the noblest system of law the world has ever seen.'"

These words occur in the address of the late Dean Ames on the occasion of the dedication of the building of the Department of Law of the University of Pennsylvania. Perhaps no other thought in that address has, at this time, greater significance than these words, fittingly descriptive of the work and influence of the man who spoke them.

The essays upon fundamental contract, property and tort law matters, now for the first time brought together in one volume, amplified by additional citations and notes of the author and added to by collateral papers not heretofore published, are the sum total of the actual writings of this greatest of modern American legal investigators.

The remainder of his life work is found in the excellent collections of cases now widely used for scientific teaching of legal principles. But when we say that the work of this life may be found between the covers of books, or contained upon the library shelf, though the shelf always near at hand, it is in deep ignorance of the greater truth about the life. In the Memoir, published in connection with the essays, are to be found the more faithful records of his work, his great mental power, and the earnest inspiration by which he succeeded. We are told that his life seemed guided by the text, "So that I train your lawyers and judges, let who will write your books." And this, after all, is the greatest secret of the universal love and respect with which the fresh memory of this man is today regarded. As a prominent instructor and head of a foremost law school, he was in intimate touch with a host of men in an important period of their lives, and made upon them a profound and lasting impression. What they gained from that association has made them, fortunate as they are, a large power in the bar of an entire country. Quickened powers of legal thought and reasoning, due to the influence of an original and striking conception of the universality of principles, has been joined in them with a deep rooted respect for just law and equity and its practice and use in honor and integrity. This is the greatest, though the less visible, contribution of the man to his country's bar and law.

Although the subject of review is but the smaller portion of his work, these essays are replete with examples of the habits of industrious research and striking generalization. Out of the great maze of early, poorly considered and even more poorly reported cases, the development of principle is traced with fidelity and genius. As the path is opened up by the unerring hand of the writer and vistas of the thought spread out to the reader, the mind rushes along them conscious of the truth and thrilled by the feeling of grandeur in accomplishment. There is a poetry always in excellent things. As we look upon the great things of nature or of masters we feel our own contracted sympathy and personality stretching out in an effort to absorb. The contraction may again take place, but never to the original extent. The mark remains.

To undertake the reading of these essays, notably the History of Assumpsit and Purchaser for Value, is to invite an experience of precisely similar character. The thought is carried on through difficulties and places of doubt

and trouble with a simplicity of statement and clearness of argument that fills us with wonder and admiration. We feel our own powers stretching as they seek to enfold the mentality which inspired and bore the burden of the work. And as understanding comes, the mastery of the workmanship, simple and unorthodox perhaps, but without craft, startles us as we turn from page to page.

The essays are not new and it seems hardly appropriate to enter into a discussion of them. Many of them have long been tested, and are now fully accepted. In not a few cases the principles contended for have been sanctioned by judicial opinion, based largely, if not entirely, upon the arguments by which they are here supported. The volume is a valuable possession; one that will always improve upon further acquaintance; suggestive and illuminating always; a mental stimulant.

R. J. B.

MISHNAH: A DIGEST OF THE BASIC PRINCIPLES OF THE EARLY JEWISH JURISPRUDENCE, *BABA MEZIAH* (MIDDLE GATE), ORDER IV, TREATISE II. Translated and annotated by Hyman E. Goldin, LL.B., of the New York Bar. Putnam's (N. Y. and London), 1913.

The compilers of the Talmud during the fifth century, in systematizing the enormous mass of Jewish common law, followed the arrangement of the Mishnah in their division of the subject matter. The Mishnah was an attempt at codification, completed under Rabbi Judah, the Prince, a distinguished descendant of the great master of the law, Hillel, at the end of the second century. The code was arranged under six divisions or "Orders," which were named Seeds, Festivals, Women, Injuries, Holy Things, Purifications. Under these six heads, the compiler disposed of the entire body of the law; civil, criminal, ecclesiastical and religious.

The fourth order, Injuries, is divided into ten treatises: (1) "The first gate," dealing chiefly with the subject of torts; (2) "The middle gate," dealing principally with bailments; (3) "The last gate," dealing principally with sale, contract, real estate and decedent's estates; (4) "Courts," dealing principally with organization and procedure of courts, and criminal law; (5) "Punishment"; (6) "Oaths"; (7) "Evidence"; (8) "Idolatry"; (9) The "Chapters of the Fathers," containing ethical maxims; (10) "Decisions," dealing principally with decisions either in civil or religious matters, that had been made through error. It is obvious that this arrangement of subject matter follows a different principle than the modern law codes. A broad distinction between the civil, criminal and ecclesiastical law is made, but the lines of demarcation are not sharply drawn.

The rabbinical lawyers followed a logic of their own, and, within the limits of the rules that they laid down for themselves, they developed a juristic system of extraordinary scope and thoroughness. It is to one of the treatises of the fourth order of the Mishnah to which attention is now directed. Mr. Goldin has undertaken to translate and annotate the treatise entitled "*Baba Mezhiah*" or "*Middle Gate*," one of the treatises of the order "*Nezikin*" or "*Injuries*." In looking over his book we are at once struck by the peculiar arrangement and sequence of the subject matter, differing in this treatise, as in the arrangement of the Mishnah as a whole, from modern systems with which we are more familiar. The subject matter is broadly divided under the following titles: Articles, lost and found; Bailment; Bargain and Sale; Interest; Contracts of Hire and Lease; and the law relating to adjoining properties. The underlying principle in this division of the subject matter is the doctrine of bailment, the determination of rights in relation to property which has passed into the possession of another, under an expressed or implied contract other than that of sale or gift, or by inheritance. The reader of Mr. Goldin's book having this principle in mind will be able to observe the logical sequence in the development of the subject matter.